

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**LETTERS PATENT APPEAL No. 326 of 1999
In
SPECIAL CIVIL APPLICATION No. 2728 of 1993****For Approval and Signature:****HONOURABLE MR.JUSTICE R.S.GARG
HON'BLE MR.JUSTICE RAVI R.TRIPATHI**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?

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**EXECUTIVE ENGINEER - Appellant(s)
Versus
RASHIDBHAI DAUDBHAI MEMON & 2 - Defendant(s)**

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Appearance :

MS SEJAL K MANDAVIA for the Appellant

MR PH PATHAK for Respondent No. 1.

MR HEMANT PRACHCHAK, AGP for Respondent No(s).: 2.

RULE NOT RECD BACK for Respondent No(s).: 3.

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**CORAM : HONOURABLE MR.JUSTICE R.S.GARG
and
HON'BLE MR.JUSTICE RAVI R.TRIPATHI**

Date : 27/07/2005

ORAL JUDGMENT

(Per : HONOURABLE MR. JUSTICE R.S.GARG)

1.The appellant, being partly aggrieved by the judgment dated 18.11.1998, passed in Special Civil Application No. 2728 of 1993, whereunder, the learned Single Judge has directed reinstatement of respondent no.1 and has further directed that he is entitled to absorption and regularisation of his service in the cadre of Class-IV employees, is before this Court. The facts necessary for disposal of the present appeal are that the respondent no.1 who was working as Labourer since 1980 under the control of the appellant made an application to the appellant/government officer that he is entitled to the benefits under the government circulars/orders. His submission is that after submission of his application, his services came to be terminated with effect from 17th/18th March, 1993. He came to the Court with a submission that he had been working with the appellant for more than 12 years, therefore, without holding any inquiry or without finding any guilt against him, his services could not be terminated. The matter was hotly contested by the State Government. It

was submitted by them that the respondent-workman was a daily wager and he was not entitled to any benefits flowing from the government resolution dated 17.10.1988.

2. After hearing the learned counsel for the parties, the learned Single Judge held that the order of termination issued on 17th March, 1993 and served upon the petitioner on 18th March, 1993 was, in fact, bad and could not be allowed to stand. The learned Single Judge, while granting the said relief also observed that the petitioner is entitled for absorption and regularisation of his services in the cadre of Class-IV employees. The Court directed that the petitioner deserves to be reinstated on his Class-IV post with continuity of service, but without back wages. The appellant-Executive Engineer, being aggrieved by the said judgment has preferred Letters Patent Appeal No. 326 of 1999, while the workman has preferred Letters Patent Appeal No. 982 of 1999 against non-grant of wages. It is to be recorded that as none appeared to press Letters Patent Appeal No. 482 of 1999, we had dismissed it in the first part of the day recording that " Mr. M.M. Parmar on behalf of Mr. P.H. Pathak seeks accommodation, which we refused. We asked Mr.

Parmar to argue the matter. He refuses to argue. The appeal is dismissed." This was recorded by us at 12.30 Noon, but nobody appeared in the said matter before us up to 4.35 P.M. At 4.35 P.M., Mr. Pathak appeared in the present appeal and even he did not say a word about the dismissal of the appeal.

3. Learned counsel for the appellant submits that the respondent no.1 was entitled to the relief claimed by him and nothing beyond that. After taking us to the writ application, it was submitted that the petitioner had prayed for quashing of the order dated 18.3.1993 and his reinstatement with continuity of the services, but had never prayed for a direction for his absorption and regularisation in the cadre of Class-IV employees. Her submission is that if the respondent no.1 was entitled to the benefits under government resolution dated 17.10.1988, then, the government is required to consider the applicability of the resolution and decide the matter.
4. Mr. Pathak, learned counsel for the respondent no.1 submitted that as the respondent no.1 had submitted before the learned Single Judge that all consequential benefits be given to the petitioner, the relief of absorption and regularisation must be deemed to be a

relief claimed as consequential benefits. It is to be noted that in the writ application, no prayer for absorption or regularisation was made. So far as the prayer for consequential benefits is concerned, it was not in relation to the absorption or regularisation in the cadre of Class-IV employees. Consequential benefits were claimed in terms of money with 18% interest. Mr. Pathak is absolutely unjustified in saying that such prayer was made and the Court was justified in granting the relief.

5. So far as the termination of the respondent no.1 is concerned, we find no fault with the judgment of the learned Single Judge, but we are unable to uphold the directions relating to his absorption and regularisation. The respondent no.1 has already made an application to the appellant department for conferring the benefits under the government resolution dated 17.10.1988 and it would be for the government to consider the same on its own merits. The appeal is allowed to the extent that the directions issued by the learned Single Judge for absorption and regularisation of the services of the respondent-workman in the cadre of Class-IV employees, are quashed. The application of the respondent no.1 for conferring rights under the

government resolution dated 17.10.1988 shall be disposed of by the concerned officer by a speaking order within a period of three months from today.

[R.S. GARG, J.]

[RAVI R. TRIPATHI, J.]

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